ANNE LIM KENG SEE

v.

MBF FINANCE BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[CIVIL SUIT NO: S2-23-52-2001]
23 OCTOBER 2005

TORT: *Defamation - Libel - 1st defendant published Bankruptcy Notice in newspaper against plaintiff - 2nd defendant published and advertised report in respect of plaintiff based on data published in newspaper - Whether defamatory - Whether report substantially true - Absence of malice - 1st defendant found to be not liable of defamation of plaintiff - Whether 2nd defendant could not be liable for publishing report that was ruled as not defamatory*

This was an appeal by the plaintiff against the decision of the learned senior assistant registrar ('SAR') allowing the 2nd defendant's application to strike out the plaintiff's statement of claim against the 2nd defendant under O. 18 r. 19(1)(b), (c) and (d) of the Rules of the High Court 1980. The 1st defendant, through the daily newspaper, the Malay Mail, had published a bankruptcy notice ('notice') against the plaintiff. The plaintiff contended that the notice as advertised in the Malay Mail was false and defamatory of the plaintiff. The 2nd defendant, a company dealing with the business of collecting data in respect of individuals and companies and passing out specific information to its customers, had published and advertised a report containing certain words in respect of the plaintiff ('alleged defamatory words'). The plaintiff contended that the report published by the 2nd defendant was defamatory as the information was untrue and, based on that report, filed this action against the 1st and 2nd defendants for defamation. The 2nd defendant then applied before the learned SAR for an order to strike out the plaintiff's statement of claim against the 2nd defendant on the ground that the content of the plaintiff's statement of claim was substantially true, in that the bankruptcy action and/or the notice had been taken and/or issued against the plaintiff by the 1st defendant. As such, the plaintiff's claim had not disclosed any cause of action against the 2nd defendant. The learned SAR found for the 2nd defendant, resulting in the present appeal.

Held (dismissing the plaintiff's appeal):

(1) In respect of the alleged defamatory words, the plaintiff had earlier brought an action against the newspapers that had published the notice against the plaintiff *ie*, the New Straits Times Press (M) Bhd and the Malay Mail. The learned judge (the same as in the instant case) dismissed the plaintiff's claim against the Malay Mail mainly on the ground that the Malay Mail was not a legal entity and as such no suit could be brought against it. The learned judge also found that there were no merits in the plaintiff's claim against the New Straits Times Press (M) Bhd. In the instant case, what the 2nd defendant had done was merely to publish the data as published in the Malay Mail. It was not disputed by the plaintiff that there was no malice on the part of the 2nd defendant in publishing the data to its customers. The special remark in the 2nd defendant's report stating "action withdrawn" further strengthened this conclusion. The liability or wrongfulness on the part of the 2nd defendant in publishing the report hinged solely on the liability of the defendants in the earlier suit for publishing the notice against the plaintiff in the Malay Mail. In that earlier judgment, the learned judge had held that the defendants were not liable. It, therefore, followed that the 2nd defendant in the instant case could not be liable for publishing a report that the learned judge had ruled as not defamatory. (paras 8, 9, 10 & 11)

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19(1)(b), (c), (d)

For the plaintiff/appellant - R Arunachalam; M/s Arun & Co
For the defendant/respondent - Haris Ibrahim; M/s Haris & Co

Reported by Suresh Nathan

JUDGMENT

Azmel Maamor J:

[1] This is an appeal by the plaintiff against the decision of the learned senior assistant registrar (SAR) who had allowed an application by the 2nd defendant to strike out the plaintiff's statement of claim against the 2nd defendant under O. 18 r. 19(1)(b), (c) and (d) of the Rules of the High Court 1980 (RHC) (encl. 19).

[2] The brief facts of the case are as follows. On 22 January 2001 the 1st defendant, through the daily newspaper, the Malay Mail, published a bankruptcy notice against the plaintiff. That advertisement was a notice for substituted service for a pending bankruptcy action against the plaintiff applied by the 1st defendant in the Kuala Lumpur Commercial Division of the High Court *vide* case No. D2-29-4162-1999. The advertisement reads as follows:

DALAM MAHKAMAH TINGGI MALAYA DI
KUALA LUMPUR

(BAHAGIAN DAGANG)

DALAM PERKARA KEBANKRAPAN NO: D2-29-4162
TAHUN 1999

Berkenaan: Anne Lim Keng See
(No. K/P : A 0149182) ... Penghutang Penghakiman

Ex-Parte : MBF Finance Berhad ... Pemiutang Penghakiman

Notis Penyampaian Ganti

Kepada:

Anne Lim Keng See,
11, Jalan 13/46,
Bandar Tasik Selatan,
57000 Kuala Lumpur.

AMBIL PERHATIAN bahawa suatu tindakan telah dimulakan terhadap kamu di Mahkamah Tinggi Kuala Lumpur No. Kebankrapan D2-29-4162-1999 oleh MBF Finance Berhad yang beralamat di Tingkat 2, Wisma MBF, Jalan Pudu, 55100 Kuala Lumpur dan Mahkamah Yang Mulia ini telah memerintahkan bahawa Notis Kebankrapan ini diserahkan kepada kamu secara Penyampaian Ganti dengan menampalkan sesalinan Perintah dan sesalinan Notis Kebankrapan di Papan Notis Mahkamah Tinggi Kuala Lumpur, di alamat terakhir Penghutang Penghakiman di 11, Jalan 13/46, Bandar Tasik Selatan, 57000 Kuala Lumpur serta melalui bentuk iklan dalam surat khabar tempatan dan penyampaian tersebut adalah sempurna dan cukup terhadap Penghutang Penghakiman selepas (7) hari dari tarikh penyampaian dan pengiklanan.

A Notis Kebankrapan ini boleh diperiksa oleh kamu di atas permohonan di Mahkamah Tinggi Kuala Lumpur.

Bertarikh pada 16hb. September, 2000

Penolong Kanan Pendaftar,
B Mahkamah Tinggi,
Kuala Lumpur.

Notis Penyampaian Ganti ini difailkan oleh Tetuan T.K. Ooi, Loo & Partners yang beralamat di Blok A, Tingkat 10, Wisma Yakin, Jalan Masjid India, 50100 Kuala Lumpur, peguamcara bagi
C Pemiutang Penghakiman.

(Ruj. Kami: MBF-PU/LOC/24-93).

[3] The plaintiff contended that the bankruptcy notice as
D advertised in the Malay Mail was false and defamatory of the plaintiff.

[4] The 2nd defendant, a company dealing with the business of collecting data base in respect of individuals and companies and passing out specific information to its customers, had on 22
E January 2001 published and advertised the following words in respect of the plaintiff:

CTOS ENQUIRY DATED 09.03.2001

F Account No : BSNCBOO Affin Bank Berhad,
Credit Control Dept – Jln Bunus
135-137, Jln Bunus, Off Masjid India,
50350 Kuala Lumpur
Tel: 0032934686
Faks: 0032912285

G Bankruptcy – Bankruptcy Notice Presented

Special Remark : Action Withdrawn

Name : Lim Keng See Anne

H Alias

I/C No. : A0149182 New IC :

Remark : Action Withdrawn

Address : 11, Jln 13/46, Bdr Tasik Selatan, KL

I Firm :

Exparte : MBF Fin - Jalan Pudu, KL

Bankruptcy No : D2-29-4162-99 High Court KL

Notice Date : N/A Malay Mail 22.01.2001

Petition Date : Hearing :

Order Date :

Annulment/Disc :

Amount :

Solicitors : T K Ooi & Partners
Block A, 10th Floor,
Wisma Yakin,
Jalan Masjid India,
50100 Kuala Lumpur.

Ref : MBF-PU/LOC/24-93
Tel : 03-26931518/26931617

(hereinafter referred to as the "Alleged Defamatory Words").

It was contended by the plaintiff that the report published by the 2nd defendant was defamatory as the information was untrue. Based on the above report the plaintiff filed this action against the 1st and 2nd defendants for defamation.

[5] On 24 January 2002, under encl. 10 the 2nd defendant applied before the SAR for an order to strike out the plaintiff's statement of claim against the 2nd defendant on the ground that the content of the plaintiff's statement of claim was substantially true in that the bankruptcy action and/or the notice of bankruptcy had been taken and/or issued against the plaintiff by the 1st defendant. As such the plaintiff's claim had not disclosed any cause of action against the 2nd defendant.

[6] The learned SAR found merits in the 2nd defendant's application. She therefore allowed the 2nd defendant's application with costs. Hence this appeal to the judge in chambers (encl. 19).

[7] After having heard arguments from both parties I decided that the plaintiff's appeal be dismissed. My reasons are as follows.

[8] In respect of this alleged defamatory words the plaintiff had earlier brought action against the newspapers which had published the notice of bankruptcy against the plaintiff. The newspapers concerned were the New Straits Times Press (M) Bhd. and the Malay Mail. These were the two defendants filed by the same

plaintiff in another action *vide* Guaman Sivil No. S6-23-48-2001. I dismissed the plaintiff's claim against the Malay Mail mainly on the ground that the Malay Mail is not a legal entity and as such no suit can be brought against it. In respect of the plaintiff's claim against the New Straits Times Press (M) Bhd. it was my finding that there were no merits in the plaintiff's claim. (See my grounds of judgment in respect of the above stated civil action). The relevant part of my decision states:

> It was submitted by the 1st Defendant that the publication was through a newspaper which had only advertised an order of the Kuala Lumpur High Court and as such should not be liable to the Plaintiff for defamation for the publication since such act falls squarely within the ambit of s. 12 of the Defamation Act 1957.
>
> S. 12(1) of the, Defamation Act, 1957 states:
>
> > 12(1). Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as mentioned in Part I of the Schedule to this Act shall be privileged unless the publication is proved to be made with malice.
>
> And s. 3 of Part I of the Schedule states:
>
> 3. A notice, advertisement or report issued or published by or on the authority of any court within Malaysia or any Judge or officer of the court or by any public officer or receiver or trustee acting in accordance with the requirements of any written law.
>
> The word "newspaper" is defined under s. 2 of the Defamation Act as follows:
>
> > 'newspaper' means any paper containing public news or observations thereon or consisting wholly or mainly of advertisements which is printed for sale and is published in Malaysia either periodically or in parts or number at intervals not exceeding thirty-six days;
>
> The Plaintiff, however, contended that the advertisement published by the Defendants was untrue. The Plaintiff claimed that she was not indebted to the Judgment Creditor. Because the advertisement was not true, the Defendants therefore had committed libel and as such the Defendants could not rely upon s. 12 of the Defamation Act as a defence. I was unable to agree with the Plaintiff's argument. For purpose of a defence under s. 12 of the Defamation Act, all that the 1st Defendant needed to prove was that there was actually an order of the Court asking such

advertisement to be published in the newspaper. This had not been disputed. The non-truthfulness of the Plaintiff's debt to the Judgment Creditor would be a matter for the Plaintiff to state at the Bankruptcy Court as a ground to set aside the Bankruptcy Notice or order. The only ground that the 1st Defendant would not be allowed to invoke s. 12 as a defence is if the publication was done with malice. On the facts of this case there was no evidence of malice whatsoever by the 1st Defendant in advertising the publication. It genuinely had no knowledge that the Plaintiff's indebtedness to the Judgment Creditor was untrue.

[9] What the 2nd defendant in the instant case had done was merely to publish the data as published in the Malay Mail. It was not disputed by the plaintiff that there was no malice on the part of the 2nd defendant in publishing the data to its customers. The special remark stating that "action withdrawn" further strengthened my conclusion that there was no malice whatsoever.

[10] In my view the liability or wrongfulness on the part of the 2nd defendant in the instant case in publishing the report hinges solely on the liability of the defendants in the suit Guaman Sivil No. S6-23-48-2001 for publishing the bankruptcy notice against the plaintiff in the Malay Mail. I have in my earlier judgment ruled that the defendants in the other suit were not liable for the reasons as I have stated in my written judgment.

[11] It therefore follows that the 2nd defendant in the instant case could not be liable for publishing a report which I have ruled not defamatory. I must hasten to add that despite my having heard the other case which involved the same plaintiff there had been no objection raised by the counsel for the plaintiff for me to hear this case. The same counsel also represented the plaintiff in the other case. As such I therefore concluded that the plaintiff had no objection for me to hear the instant case.

[12] In the light of the reasons as stated above I dismissed the plaintiff's appeal with costs.